

SUMMARY
Virginia Housing Commission
Housing and Environmental Standards Workgroup
Senate Room A, General Assembly Building
November 27, 2012
2:00 PM

I. Welcome and Call to order

- **Senator John Watkins, Chair** called the meeting to order at 2:00 PM
 - In addition to the invited speakers the following Workgroup members were in attendance:
 - **Workgroup Members:** Delegate David Bulova; Delegate Barry D. Knight; and Senator John Watkins; Brian Buniva, *LeClair Ryan Law Firm*; Ron Clements, *Virginia Building & Code Officials Association*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; Mark Flynn, *Governor Appointee*; John Hastings, *Virginia Housing Development Authority*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Art Lipscomb, *Virginia Professional Fire Fighters*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Ed Rhodes, *Virginia Fire Chiefs Association*; Neal Rogers, *Virginia Housing Development Authority*; Michael T. Toalson, *Home Builders Association of Virginia*; and Cal Whitehead, *Whitehead Consulting*
 - **Staff:** Elizabeth Palen, *Executive Director of VHC*

II. Discussion of Proposed AOSS Legislation

- **Mr. Eldon James, Public Policy Consultant; Fauquier County** stated that Delegate Lingamfelter put together a working group, which included all stakeholders from industry and local government, to develop consensus recommendations. Two pieces of legislation were discussed: the bill and then the resolution.
 - bill deals with sewage systems and (betterment) loans. The changes in state code were to dealing with Alternative On-site Sewage System failures for low income households. These systems are more expensive to install, maintain and repair than conventional systems. This addressed through revision of betterment loan and on-site sewage indemnifications fund sections of the code. On Line 17 of attached files (found under “Materials”), definition of betterment load, makes clear the loan can be used for conventional on-site and alternative on-site or alternative discharging systems.

- Line 71-72, the sentence struck deals with on-site sewage indemnification fund has not been utilized since 2008, which was identified from the working group's discussion. The consensus was if it had not been used, to move on and focus resources they are needed. However, if someone needs to use it, no one in the group would lose sleep. The addition of line 73-75, which authorizes board of health to make up to 25% of the indemnification fund available for betterment loans or to guarantee betterment loans. The 25% refers to the balance of fund at July 1.
 - Line 76 attempts to update the portion of the fee that goes to the indemnification fund. The \$10 is being struck and replaced with \$25. When the \$10 was put in the code, the total application fee was \$75. Today the application fee ranges from \$225 if you have an on-site evaluator or engineer submitting the application; to \$425 if you have a "bare application" where owner submits it themselves; or up to \$1400 if it is for a system over one thousand gallons a day. This is an attempt to update the set aside into the indemnification fund.
 - : Line 120 this change provides for authorization for the commissioner of the health department and the attorney general to develop actuarially sound policies for providing or guaranteeing betterment loans. The rest of changes deal with (32.1-164.12), and clarifies that betterment can be used for failing or conventional on-site, alternative on-site, or alternative discharge systems. Funds from the on-site sewage indemnity fund can be used for such loans or such guarantees. These changes are on lines 131-133, 136, 139-140, 146-147, 153-154, 160 of the bill.
- **Delegate David Bulova:** My concern comes down to the funding mechanism, specifically on line 76. Those fees gone up from \$75 to \$225 to \$1600 or more depending on the complexity of the system. Of our staff, how much of their salaries are now being paid by this fee, and how much will be taken away by removing \$15 away from them?
 - **Mr. James:** The initial move of the sub group was to increase the fee, but this was met with pushback. A \$15 increase was agreed to come out of existing funds. These moneys come against those user fees that go now to support operation of state office. Allen Knapp is here ,and I will give some numbers based on a conversation we had previously. I invite him to correct me, but I believe that \$15 would equate to \$300,000 annually
 - **(Mr. Allen Knapp, health department):** (let me think about that)
 - **Mr. James:** Delegate Lingamfelter said he would put in a budget amendment to address that change.
- **Del. Bulova:** The money must come from somewhere. The way it is laid out now, it is user fee. Those using the system pay for this almost the way you pay for a utility. If Del. Lingamfelter were to put in a budget amendment, that would invariably come out of a general fund, which means that everyone actually are paying for the upkeep and maintenance of those systems, shifting the cost burden from those who actually benefit from those systems to everyone else. Do you agree that's a concern?

- **Sen. Watkins:** I'm not sure that's what occurs. I believe that Del. Lingamfelter will submit Amendment within a non general fund category that merely allocates a part of that revenue stream from the health department to the betterment fund.
- **Del. Bulova:** That alleviates the one concern involving user fee versus general fund. However, it comes back to the question to Mr. Knapp, which is can you absorb a loss of \$300,00 and still do your job?
 - **Allen Knapp, Virginia Department of Health:** Right now, we are taking somewhere between 8,000-10,000 applications each year. Each of those paying into the indemnification fund at a rate of \$10 apiece. Through successive years and budget tightening, general funds have been replaced by fee revenue. If we siphon off more of the fee, it will reduce available funds for agency. If you take 10,000 applications and multiply it by \$15 fee, we end up with a \$150,000 figure. However, as the economy improves, more applications may come, and those numbers can change. I think looking at a figure between \$150,000-300,000.
- **Sen. Watkins:** Can you absorb that kind of loss? that looks like losing a person or two each year
 - **Mr. Knapp:** I want to say that it would be significant, given that we have already lost staff due to reductions. I am uncomfortable saying we could handle that loss.
- **Sen. Watkins:** if the fee structure was established by regulation?
 - **Mr. Knapp:** The fee structure was originally established in the code, since then the number in the code have been changed successive years through the budget bill.
- **Sen. Watkins:** I agree that it would seem inappropriate that the moneys come from the general fund. It would seem prudent that if it becomes that difficult, you might suggest to Del. Lingenfelter that he put in two budget amendments: one to adjust fee structure, and one to adjust the percentage going to the betterment fund.
- **Mr. James:** I will relay the message back to the Del Lingenfelter and draft any budget amendment the Delegate asks of me.
- **Del. Watkins:** any other questions? Comments from audience? Do we recommend this to the full commission?
- **Del. Bulova:** I do not know if I am ready to recommend to full commission with so many what-if in terms of how we deal with it from a budget standpoint.
- **Sen. Watkins:** I favor the bill as a chance that accomplishes a need we have, particularly in an underserved community with regard to repairing facilities that go bad. Whether or not it passes will remain contingent on whether they get the budget amendments
 - With one exception, it appears everyone feels we should go forward and let Del. Lingamfelter deal with it before the full commission, and put the appropriate budget amendments in. Secondly, Mr. James, we have a recommendation that we have a study put in place.
- **Mr. James:** We have a House Joint Resolution that addresses the study. This is clearly an emerging technology. The capabilities have dramatically changed in the

past decade. In the case of some local ordinances, possibly including this one, that the technology ahead of law. This is an important tool for property owners, especially those with previously undevelopable land with conventional systems. It is a vitally important system to our Virginia Watershed Implementation plan. If done correctly, it can be a big help for local government. If done wrong, it can be a nightmare.

- Management of systems requires a different approach from what we traditionally faced with traditional systems at the state and local level. We have had a variety of regulations across the state. (15.22157) has been amended multiple times since 2005, which has caused some confusion that has led to three different (HG's) opinions. Talking to different attorneys, you will get different opinions as to whether those are all consistent, in line, or if they conflict.
- The working group felt it was a good time to take a legislative look at this code section and bring together necessary party to look at that section and determine if it is doing its job in terms of properly balancing state and local authority and protecting public health, property interest, and water quality.
- One of the things Del. Lingamfelter would really like to see is the development of a model local ordinance. There other things that were mentioned that we may want to incorporate into draft, like identify best practices and policies—possibly with an emphasis on policy because with emerging technology, we are in the situation where law may not be keeping up with technology and so policy examination may be more valuable than practices--A look at evaluating state databases system and other databases how they integrate.
- On line 35, you asked for the recommendation no later than the 1st day of 2014 session. Why would you not want something back sooner in case you needed to do something in the 2014 session?
 - **Mr. James:** This was not a detail he focused on in the drafting of the resolution, and is certainly not fixed in concrete.
- I was part the stakeholder group that initially met about this study, and it AOSS professionals. All the professionals were originally opposed to any local regulation of AOSS, which was prior to recent opinion of Attorney General. It was suggested some unique aspects in certain areas of the state, and that certain local requirements that may need to be addressed in state regulations or state statutes. That was one of the reasons they felt a study was needed to see if any could be identified. There is also a concern regarding the localities in Chesapeake Bay Watershed that are subject to the Chesapeake Bay Act on upcoming EPA regulations dealing with the Watershed Implementation Plans and how all on-site systems will be affected by that, too.
- **Sen. Watkins:** anyone from building code officials have comments?
- I do not see any problem with it.
- **Del. Bulova:** I am a fan of model ordinances, just as a template. I am not saying go ahead and use it; Somewhere between line 27-30, can we mention the Chesapeake Bay (TMDL whip). I know original concern was the frequency of

inspections. I want to be sure do not backtrack on that aspect because that would require us to redo the whip and change the playing field with respect to what the EPA was approved. I want to be sure we have specific language in there that acknowledging that this needs to comply with the existing whip.

- **Mr. Edward Mullen, Reed Smith Law Firm** I am representing homeowners. Mr. Tolson, could not be here but sent him in his stead. I skimmed resolution and heard the discussion of the Full Commission meeting in Roanoke. He understood that Study that would replicate the Loudon program. From our perspective, the law is pretty clear, and what (24 56) means is clear. We had an Attorney General's opinion that confused the issue a bit because of the way it was worded and the way the question was asked. We had one opinion a few years ago that was crystal clear, and another opinion a few weeks ago that was perfectly clear and reiterated the first. Then there was an opinion in the Spring that was confusing. While appreciating the sentiment behind it, I do not think it is necessary to clarify the requirements. I believe one handout entitles "Attorney general Opinions Regarding Local Regulation of Alternative On-site Septic Systems" makes an attempt to distill the rule after this. Sets forth what (15.22157 C and D) mean for local regulation of these systems. From our perspective, that aspect of study is unnecessary.
- **Mr. James:** I will not respond to the previous comments because any response I would give would be hearsay. There was some significant discussion in the working group with regard to the Chesapeake Bay (DMDL) Watershed Implementation Program phase 2, which implies some obligations on local government although it is not specific. It is pretty clear to those involved that that is coming.
 - The working group did acknowledge that there exists some confusion between local government responsibility and local government authority. With failed AOSS systems in the current environment, both regulatory and statutory, does not allow the health department to act as swiftly as one might like. Subsequently, there is pressure put on local governing authority, and exists question exists as to whether the cost will fall to local government. If we have a failed system that can be repaired, whoever is paying for repair deals with the problem. However, if is system is polluting downstream, then it becomes the responsibly of local government not so much to fix AOSS system but to offset that aided nutrient pollution. It is far more expensive to fix pollution downstream than to fix at source. The local government is fearful where we have mismatched responsibility and authority . This one of the reason for us to look at this statute to confirm where we have assigned all responsibility.
- **Sen. Watkins** After years of study, I am concerned we are not making the progress necessary on this topic. I agree with Del. Bulova that it would be helpful to have a model ordinance for local government to work from, but the question remains of whether this is a state or local government responsibility. I think it is a state responsibility. Alan, are we making progress on the inventory system?
 - **Mr. Knapp:** Yes, I believe progress is being made. When we polled the district health departments, they reported they had roughly 19,000

alternative systems that are logged in local databases. That is compared with nearly 17,000 AOSS's in the state-wide database. This is a gap of less than 3,000 systems that need to migrate to the state-wide system. Although we have seen great improvement over the summer, the job still is not finished.

- **Sen. Watkins:** I do not think another study with this workgroup is helpful. I think it would be preferable to request the housing commission appoint a stakeholder group made up of professionals, interested parties, housing side, local parties, and state regulatory side. I would recommend the appointment of 6-10 people to the stakeholder group and task them with looking at a model ordinance, the responsibilities, and the language of (15.2-2057). We will ask them to report back no later than Dec. 1 of next year.
- **Sen. Watkins:** are there any further comments?
- **Mr. Ed Rhoads:** Do you want to take care of Del. Spruill's issue and move it to the full commission?
- **Sen. Watkins:** There has been no action recommended. It is my understanding that there is a regulatory piece not yet settled. I would recommend to Full Commission that it not be reported. If Delegate Spruill wished to further pursue this topic, he would need to introduce new legislation in 2014.

III. Public Comment

- **Sen. Watkins** asked if those in the audience had any other thought or concerns.

IV. Adjourn

- Upon hearing none, **Sen. Watkins** adjourned the meeting at 2:30 PM